

**REMARKS**

Applicants respectfully request favorable reconsideration of this application, as amended.

Applicants presume that the Office Action of June 12, 2008 is intended to be a Non-Final Office Action because box 2b) on the Office Action Summary form and the Image File Wrapper in PAIR indicate that the Office Action of June 12, 2008 is Non-Final. The reference to a final Office Action at page 9 is believed to be in error.

As will be discussed below in greater detail with regard to the alleged indefiniteness rejections, Applicants decline to automatically subscribe to any of the Office Action's definitions or characterizations (e.g., on pages 3 or 7).

Claims 26-35 are pending, with Claim 26 being the sole independent claim. By this Amendment, Claim 26 has been amended to recite certain distinctive features of Applicants' invention with greater particularity and to address the alleged indefiniteness in Claim 26. Support for the amendments to Claim 26 can be found in Applicants' Substitute Specification at, for example, page 17, lines 20-23. Claim 26 has also been amended to correct a minor typographical error. Claims 1-25 were previously cancelled without prejudice or disclaimer.

In the outstanding Office Action, Claims 26-35 were rejected under 35 U.S.C. §101 as allegedly being directed to a non-statutory subject matter; under 35 U.S.C. §112, second paragraph, as allegedly being indefinite; and under 35 U.S.C. §103(a) as allegedly being unpatentable over Turek in view of Jung and Anerousis.

Regarding the rejection under 35 U.S.C. §101, Applicants respectfully request reconsideration for the reasons as set forth below.

Applicants respectfully disagree with the Office Action's characterization that the elements "configuration means" and "writing means" are merely software components. At a minimum, these two elements are components used by the deployment device to employ a computerized process (specifying one or more domains in the computer system and writing in the subscriber list), as discussed in Applicants' specification at page 4, lines 7-16, and page 10, lines 17-20, for example.

Furthermore, even assuming *arguendo* that the recited "indicator agents" could be so characterized as software components that define functional descriptive material, Applicants respectfully submit that determining whether the claim is directed to statutory subject matter requires a determination of whether the claim as a whole is drawn to statutory subject matter, and not whether each individual element in the claim qualifies as such. *In re Alappat*, 33 F.3d 1526, 1544, 31 USPQ2d 1545, 1557 (Fed. Cir. 1994) (in banc). In that regard, the Office may not dissect a claimed invention into discrete elements and then evaluate the elements in isolation to determine whether the claim is drawn to statutory subject matter. *Diamond v. Diehr*, 450 U.S. 175, 188-189, 209 USPQ 1, 9 (1981).

Moreover, when a computer program is used in a computerized process where the computer executes the instructions set forth in the computer program, the claim remains statutory irrespective of the fact that a computer program is included in the claim. Therefore, even assuming that the "indicator agents" could be interpreted to define computer software, the software in Claim 26 is used in a computerized process. *Examination Guidelines for Computer Related Inventions*, 61 Fed. Reg. 7478 (1996) at page 7482.

In addition, when a computer program is recited in conjunction with a physical structure, such as a computer memory, the claim should be treated as a product claim, which qualifies as statutory subject matter, since the claimed invention as a whole produces a useful, concrete and tangible result. See *Examination Guidelines for Computer Related Inventions*, 61 Fed. Reg. 7478 (1996) at page 7482.

Thus, it is apparent that Claim 26 is directed to a physical structure, such as a computer memory (subscriber list stored using storage means of the resource), used in conjunction with software components. Therefore, Applicants respectfully submit that Claim 26 is directed to statutory subject matter.

Accordingly, Applicants respectfully request that the rejection under 35 U.S.C. §101 be withdrawn.

Regarding the rejection of Claim 26 under 35 U.S.C. §112, Claim 26 now recites, *inter alia*, “a plurality of indicator agents each configured to evaluate an indicator comprising a value characterizing a status or an operation of one or more resources of the computer system and an indicator-defining equation which uses object identifiers associated with a set of variables for calculating said value.” Applicants note that the Substitute Specification clearly discloses, for example, that the “indicator designates both the value characterizing the status or the operation of a set of equipment to be monitored, and the equation that makes it possible to calculate this value” as well as that “the calculation of the value of an indicator refers to objects identified by object identifiers...using a... set of variables”. See Substitute Specification page 2, lines 17-25, and page 17 lines 20-23.

Thus, contrary to the Office Action, indicators as recited in Claim 26 are not representative of only scalars, but, also include, for example, an indicator-defining

equation that makes it possible to calculate the value. Since the indicator-defining equation is clearly disclosed in the Substitute Specification, the proper metes and bounds of the claim as regarding the value and the equation used to calculate the value can be clearly ascertained.

Accordingly, Applicants respectfully submit that Claim 26 particularly points out and distinctly claims the subject matter recited therein. Withdrawal of the rejection is therefore respectfully requested.

Turning to the rejections under 35 U.S.C. §103(a), without acceding thereto, independent Claim 26 has been amended to recite certain distinctive features of Applicants' invention with greater particularity, as noted above. For example, as now set forth in Claim 26, the indicator agents each comprises, *inter alia*, a value and an indicator-defining equation which uses object identifiers associated with a set of variables for calculating the value.

It is apparent that the applied references fail to teach or suggest at least this feature. For example, the Office Action relies on Anerousis to show that the indicator agent uses an equation to calculate the value. See Office Action, page 10. However, it is apparent that Anerousis does not teach or suggest that the equation uses object identifiers associated with a set of variables to calculate the value.

Accordingly, Claim 26 is believed to distinguish patentably from the applied references whether taken alone or in combination, for at least the reason discussed above.

Additionally, Claim 26 recites a deployment device which includes, *inter alia*, writing means associated with each indicator agent, each writing means being configured to write in an associated subscriber list, upon receiving a subscription notification from at least one other indicator agent, an identification and management information of the at

least one other indicator agent, and the subscriber list is managed by the associated indicator agent and stored using storage means of the resource associated with the indicator agent. It is apparent that the applied references also fail to teach or suggest this feature.

The Office Action acknowledges, at page 9, that Turek fails to disclose the features discussed above, and does not allege that Anerousis discloses the features of Claim 26. However, the Office Action alleges that Jung cures Turek's and Anerousis' deficiencies.

It is apparent, however, that Jung does not teach or suggest that each writing means writes in the associated subscriber list an identification and management information of the at least one other indicator agent, as recited in Claim 26. For example, Jung discloses a control mechanism 55 that propagates changes in the attributes of a cell to other cells that observe that cell, and the changes in the value of a cell are updated based on the changes in the attributes of other cells. *See* Jung, col. 7, lines 10-13, 24-31 and 55-60. This means that, even assuming *arguendo* that each indicator agent in Jung has an associated writing means, the writing means in Jung merely writes updated information about the associated indicator agents. In contrast, Jung's writing means does not write information regarding the indicator agent from which the associated indicator agent received the subscription notification, as recited in Claim 26.

Furthermore, Jung's teachings are also in contrast to Claims 26's recitation of writing means configured to write in the associate subscriber list, upon receiving a subscription notification from at least one other indicator agent, an identification and management information of said at least one other indicator agent.

Anerousis apparently fails to cure the above-noted deficiencies of Turek and Jung, nor has the Office Action relied on Anerousis for such teachings.

Accordingly, Claim 26 and its dependent claims are believed to distinguish patentably from the applied references.

In view of the foregoing, a prompt Notice of Allowance is respectfully solicited.

Should the Examiner believe that any further action is necessary to place this application in better form for allowance, the Examiner is invited to contact Applicants' representative at the telephone number listed below.

The Commissioner is hereby authorized to charge to Deposit Account No. 50-1165 (T2147-906756) any fees under 37 C.F.R. §§ 1.16 and 1.17 that may be required by this paper and to credit any overpayment to that Account. If any extension of time is required in connection with the filing of this paper and has not been separately requested, such extension is hereby requested.

Respectfully submitted,

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